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Nos. 84-325, 84-356

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

Metropolitan Life Insurance Company,
Appellant
v.
The Attorney General of the Commonwealth
of Massachusetts,
Appellee

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The Travelers Insurance Company,
Appellant
v.
The Attorney General of the Commonwealth
of Massachusetts,
Appellee

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# Motion To Dismiss The Appellants' Appeals or To Affirm the Judgment of the Supreme Judicial Court of the Commonwealth of Massachusetts

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## I. QUESTION PRESENTED*

Whether a Massachusetts law requiring that all health insurance policies include minimum mental health coverage (Mass. Gen. Laws ch. 175, §47B) is preempted by the Employee Retirement Income Security Act (ERISA), where ERISA explicitly exempts state insurance laws from its preemption provision. 29 U.S.C. §1144 (b)(2)(A).

* Separate jurisdictional statements have been filed in this case by Metropolitan Life Insurance Company, arguing ERISA preemption, and the Travelers Insurance Company, arguing preemption by the National Labor Relations Act, 29 U.S.C. §§151 et seq. This motion directly addresses only the ERISA issue, as it was the only issue addressed by the Supreme Judicial Court pursuant to the Court's order of remand. (App. C. 10a-12a). With respect to the question of NLRA preemption, the Appellee relies upon and incorporates by

reference his earlier motion to dismiss or affirm, filed September 20, 1982. Metropolitan Life Ins. Co. v. Massachusetts and Travelers Ins. Co. v. Massachusetts, appeals docketed, Nos. 82-299, 82-300 (U.S. Sup. Ct., Aug. 20, 1982). The Attorney General points out, however, that the Supreme Judicial Court's holding with respect to the NLRA appears to have been affirmed implicitly in Belknap Inc. v. Hale, __U.S.___, 103 S. Ct. 3172 (1983) and Brown v. Hotel and Restaurant Employees & Bartenders International Union Local 54, ___U.S.___, 104 S. Ct. 3179 (1984.)

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## III. MOTION TO DISMISS THE APPELLANTS' APPEALS OR TO AFFIRM THE JUDGMENT OF THE SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS

Pursuant to Rule 16 of this Court, the Commonwealth of Massachusetts renews its motion that Appellants' Appeals be dismissed or that the Judgment of the Supreme Judicial Court ("SJC") for the Commonwealth of Massachusetts be affirmed on the grounds that the SJC's decision is plainly correct and the questions presented by the jurisdictional statements are so unsubstantial as to warrant no further argument.

## IV. STATEMENT OF THE CASE

In 1973, the Massachusetts General Court enacted a statute, Massachusetts General Laws, chapter 175, §47B (Section 47B), (App. J, 87a-89a), which mandates that all health insurance policies covering Massachusetts residents provide minimum benefits for inpatient and outpatient treatment of mental illness.

A decade later, the Appellant insurance companies ("insurers") attempted to avoid the necessity of writing policies containing Section 47B's benefits by arguing that such state regulation of insurance, a traditional state right, [1/] is preempted by a later-enacted federal

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1/ Insurance regulation is generally reserved for the states. See, e.g. McCarran-Ferguson Act, 15 U.S.C. §§1011, et seq. (App. J, 92a).

law regulating employee welfare plans[2/] and a second law governing collective bargaining.[3/] The insurers assert that employee benefit plans are affected by Section 47B, insofar as such plans purchase health insurance for covered employees,[4/] and that collective bargaining is affected because health insurance benefits may be set in the course of that process. The courts of

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2/ Employee Retirement Income Security Act of 1974, 29 U.S.C. §§1001 et seq. (ERISA) (App. J, 85a-87a).

3/ National Labor Relations Act, 29 U.S.C. §§151 et seq. (NLRA) (App. J, 89a-91a).

4/ No ERISA plan is a party to the case; nor has the Attorney General sought to apply the mandate of Section 47B directly to employee benefit plans. Section 47B, as enforced in this action, applies to insurance policies. See, App. F, 43a.

the Commonwealth have twice rejected these arguments because they founder on the unmistakable intent of Congress not to preempt insurance laws.

That intent is given its clearest exposition in ERISA itself. Throughout the course of this state court litigation the Commonwealth has successfully asserted that Section 47B is exempt from preemption because ERISA's plain language saves from preemption "any law...of any state which regulates insurance". 29 U.S.C. §1144 (b)(2)(A). (App. J, 86a). The courts of the state have consistently reached the same conclusion, albeit by a somewhat narrower reading of the insurance saving clause in ERISA than that proposed here, and only after examining the practical

interplay of Section 47B with ERISA.

The trial court focused on the practical impact of Section 47B on the purposes of ERISA and found no basis for establishing any conflict between Section 47B and ERISA. (App. F, 51a-56a). It rejected arguments by the insurers that varied state insurance laws such as Section 47B would effect a lack of uniformity in multi-state employee benefit plans. Specifically, the trial court found that (1) the administrative burden imposed by mandated benefit laws, including the diversity of eligibility requirements for each state, was no more complex or burdensome to interstate commerce than various other multi-state regulatory schemes such as workmen's compensation laws; (2) the insurers introduced no

credible evidence establishing that the trend toward self-insurance is more pronounced in Massachusetts by virtue of the enactment of Section 47B; and (3) the insurers presented no credible evidence that even assuming every state had enacted mandated benefit laws with varied eligibility requirements, such diversity would be any more complex or burdensome to interstate commerce than various other diverse multi-state regulatory schemes. (App. F. 54a-56a).

With respect to the cost impact of Section 47B on ERISA plans, the court specifically found that (1) the insurers presented no evidence that the insurance companies could not absorb the cost of compliance with Section 47B; (2) they produced no credible evidence that any ERISA plan in the United States had gone

bankrupt because of compliance with a mandated benefit statute; and (3) they produced no credible evidence to establish the actual cost which insurers would incur if they complied with Section 47B. (App. F, 54a-55a).[5/]

The Supreme Judicial Court in its first treatment of the case noted that

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5/ The Appellant Metropolitan's Jurisdictional Statement, however, continues to misrepresent the trial court's findings. It boldly asserts, without citation, that state mandated benefits statutes, such as Section 47B, significantly increase the cost of plan administration, make uniform multi-state ERISA plans far more difficult to achieve and force beneficiaries to choose between paying higher premiums, sacrificing other benefits and foregoing insurance altogether. Jurisdictional Statement of Metropolitan Life Insurance Company, Appellant, at 4, 5, 18, 21, 21 n.11, 23. Such statements are nothing more than public policy arguments which should properly be addressed to Congress or the Massachusetts General Court. Such statements have no support in the Findings and Conclusions of the trial court, (App. F, 36a-62a), and should not be considered by this Court.

ERISA's saving clause for state insurance laws was broad enough to permit a reading saving Section 47B from preemption. Attorney General v. Travelers Ins. Co., 385 Mass. 598 (1982), vacated and rem'd ___U.S.___, 103 S. Ct. 3563 (App. D, 21a). After examining the language of ERISA's preemption and saving clauses and the trial court's finding that the insurers failed to show any actual conflict between ERISA and Section 47B, the SJC held that Section 47B was not preempted. (App. D, 22a, 25a).

On appeal, this Court vacated the SJC's decision and remanded this case for reconsideration in light of its intervening decision in Shaw v. Delta Airlines, 103 S. Ct. 2890 (1983). (App. C, 10a-12a).

On remand, the Supreme Judicial Court again found that ERISA did not preempt Section 47B. Attorney General v. Travelers Ins. Co., 391 Mass. 730 (1984). (App. A, 7a). Considering the case for a second time, now in light of Shaw, the SJC pointed out that Shaw does not address the insurance exemption in ERISA. (App. A, 4a). Using Shaw's analysis that effect must be given to ERISA's plain language, Shaw, 103 S. Ct. at 2900, the court reiterated its previous view that in light of the absence of any conflict between ERISA's purposes and the operation of Section 47B, Section 47B should survive. (App. A, 7a).

The SJC concluded that to read ERISA as preempting Section 47B would be to "read into the statute an intent that is not expressed by plain words or by necessary implication" and would

"require an unnaturally narrow reading of the phrase 'any law . . . which regulates insurance'". (App. A. 6a-7a). The court held that Section 47B was a "bona fide regulation of insurance" and was "within the spirit as well as the letter of the insurance exception to ERISA preemption," and so, should not be preempted. (App. A, 7a). It is that conclusion which the insurance companies ask this Court to reverse.

## V. ARGUMENT

### A. Summary of Argument

The insurance companies' arguments were properly rejected by the state courts.[1/]

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1/ The SJC's decisions are consistent with the determination of the majority

(footnote continued)

The plain language of ERISA exempts insurance laws such as Section 47B from preemption. 29 U.S.C. §1144(b)(2)(A). The contrived reading of the insurance saving clause proffered by the appellants is fashioned without support in the text of ERISA or its legislative history. By specifically including in ERISA the insurance saving clause, which was present in ERISA from its earliest drafts, and by using language which is plain and unambiguous, Congress expressed an explicit and deliberate

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(footnote continued)

of courts which have addressed the same defenses to mandated benefits statutes posed by these same insurance companies. Insurance Comm'r v. Metropolitan Life Ins. Co., 296 Md. 334, 463 A. 2d 793 (1983); Wadsworth v. Whaland, 562 F. 2d 70 (1st Cir. 1977), cert. denied, 435 U.S. 980 (1978); Metropolitan Life Ins. Co. v. Whaland, 119 N.H. 894, 410 A. 2d 635 (1979). See also Eversole v. Metropolitan Life Ins. Co., 500 F. Supp. 1162 (C.D. Cal. 1980).

intent that insurance laws, such as Section 47B, survive preemption. 1 Legislative History of the Employee Retirement Income Security Act of 1974, at 51, 186-187, 634, 3820 (1976).

Finally, the operation of Section 47B works no frustration of the purpose of ERISA. The central aim of ERISA was to defeat fraud, promote disclosure and establish fiduciary standards, 29 U.S.C. §1001 (b)-(c); Alessi v. Raybestos - Manhattan, Inc., 451 U.S. 504, 510 (1981), with a secondary goal of encouraging uniformity in ERISA plans. Shaw, 103 S. Ct. at 2901, 2903; Attorney General v. Travelers Ins. Co., supra (App. D, 24a-25a). By creating exceptions to ERISA preemption of state laws, Congress expressly provided for a

lack of uniformity in ERISA plans among the states. 29 U.S.C. §1144(b). Finally, as Shaw notes, the substantive content of ERISA plans, which is affected by state insurance laws such as Section 47B, was not a concern of Congress when it enacted ERISA. Shaw, 103 S. Ct. at 2897.

B. Appellants' Question Is Not Substantial Because Mass. Gen. Laws ch. 175, §47B Is A Law Which Regulates Insurance And Hence Is Exempt From ERISA Preemption.

Because Section 47B is a law which regulates insurance and hence is exempt from ERISA preemption, this case really presents no issues of constitutional dimension, and characterizing it as a preeemption case is, in a sense, mistaken. Instead, the case involves an

ordinary exercise in statutory construction. Massachusetts asserts that its statute is insulated from a preemption-based challenge because Congress has decreed, as a matter of federal law, that regulation of insurance is best left to the states and is not preempted by ERISA.

If this Court analyzes the matter as a preemption case, however, the analytical framework remains the same. Preemption of state law is not a favored doctrine:

> "Preemption of state law by federal statute or regulation is not favored 'in the absence of persuasive reasons either that the nature of the regulated subject matter permits no other conclusion, or that Congress has so ordained.'" Chicago & North Western Transp. Co. v. Kalo Brick and Tile Co., 450 U.S. 311, 317 (1981), quoting Florida Lime & Avocado Growers v. Paul, 373 U.S.

132, 142 (1963). See Jones v. Rath Packing Co., 430 U.S. 519, 525-526 (1977); Perez v. Campbell, 402 U.S. 637, 649 (1971); Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947); Hines v. Davidowitz, 312 U.S. 52, 61-62 (1941).

Alessi v. Raybestos - Manhattan, Inc., supra, 451 U.S. at 522. This is especially true where, as here, the law sought to be preempted lies in an area such as insurance that Congress has specially left to the states to regulate:

> 'we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.'

Jones v. Rath Packing Co., 430 U.S. 519, 525 (1977), quoting Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947).

Thus, in determining whether Section 47B is preempted, "our task is to

ascertain Congress' intent in enacting the federal statute at issue." Shaw, 103 S. Ct. at 2899. An examination of ERISA and its legislative history leaves no doubt that Congress intended state insurance laws like Secton 47B to survive ERISA preemption.

Whether one is engaged in an ordinary exercise of statutory construction or a preemption analysis, the best indicator of Congressional intent is the wording of the statute involved. Here, the state law, Section 47B, survives mistaken invocation of the Supremacy Clause largely on the strength of ERISA's saving clause for state insurance laws, which provides that:

> Except as provided in subparagraph (B), nothing in this subchapter shall be construed to exempt or

> relieve any person from any law of any State which regulates insurance, banking or securities.

29 U.S.C. §1144(b)(2)(A).

This express limitation on ERISA's otherwise sweeping preemption of state laws exhibits the unmistakable intent of Congress to save state insurance laws. And, for Congress to preserve state insurance laws from preemption comports with the historic delegation to the states of insurance regulation that Congress accomplished through the McCarran-Ferguson Act:

> No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance... unless such Act specifically relates to the business of insurance...

15 U.S.C. §1012(b).

As this Court pointed out in Alessi, supra, in enacting ERISA, Congress expressly intended to circumscribe certain areas where state regulation was to be left undisturbed:

> [t]he scope of federal concern [for employee benefit plan regulation] is, however, limited by ERISA itself. The statute explicitly preserves state regulation of "insurance, banking or securities."

Alessi, 451 U.S. at 523 n.19.

Nevertheless, the insurers advance two arguments designed to win preemption of Section 47B. First, the insurers claim that Congress sought through ERISA to mandate uniformity in benefits and administration of employee benefit plans; second, the insurers assert that Section 47B is not an insurance law. But the insurers' arguments fall short

of their mark and twice have been rejected by the SJC.

In its first opinion, the SJC, echoing Alessi, recognized that encouraging uniformity in benefit plans was but one purpose of ERISA:

> Congress undoubtedly contemplated a system of uniform national regulation in the areas governed by ERISA. On the other hand, it specifically approved state regulation in the fields of insurance, banking and securites, and so could not have intended to mandate complete uniformity for the convenience of multi-state employees. Moreover, the Judge below stated in his findings that the defendants had presented "no credible evidence that [diverse State mandatory benefit laws] would be any more complex or burdensome to interstate commerce than various other...multi-state regulatory schemes such as workmen's compensation laws."

Attorney General v. Travelers Ins. Co., supra. (App. D. 24a) (emphasis added).[7/]

In its second opinion, the SJC acknowledged again that uniformity of ERISA plans was a purpose of Congress in enacting ERISA. The SJC noted, however, that an express limitation on the ability of plans to be uniform is created by the "broad language of the insurance exemption." Attorney General v. Travelers Ins. Co., supra. (App. A, 6a). The SJC concluded that "mandated coverage is within the States' traditional authority to regulate

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7/ Such conclusion finds support in Shaw where this Court recognized that in ERISA Congress sought to "minimize," but not eliminate, "the need for interstate employers to administer their plans differently in each State in which they have employees." Shaw, 103 S. Ct. at 2904.

insurance. '[U]nless Congress conveys its purpose clearly, it will not be deemed to have significantly changed the federal-state balance.' United States v. Bass, 404 U.S. 336, 349 (1971). See Wadsworth v. Whaland, supra at 78." Id. (App. A, 6a).

In their second argument, the insurers engage in creative reading and insist that the insurance saving clause applies only to "traditional" insurance laws, not to "any law of any state which regulates insurance." Jurisdictional Statement of Metropolitan at 14-15, 24-25.[8/]

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8/ The Commonwealth of Massachusetts has had a long tradition of prescribing the nature of insurance policies, of which Section 47B is but one recent example. As early as 1908, Massachusetts enacted statutes which prescribed provisions to be contained

(footnote continued)

The insurers never define "traditional insurance laws" beyond claiming that:

> In appellant's view, the preemption and [insurance] savings clauses can

(footnote continued)

in insurance policies. New York Life Insurance Co. v. Hardison, 199 Mass. 190, 85 N.E. 410 (1908). In the area of automobile insurance, Massachusetts pioneered the no-fault system and required auto insurance policies to contain certain provisions. Pinnick v. Cleary, 360 Mass. 1, 271 N.E. 2d 592 (1971). Similarly, compulsory coverage for bodily injury is mandatory in auto insurance in Massachusetts. Insurance Rating Board v. Commissioner of Insurance, 356 Mass. 184, 248 N.E. 2d 500 (1969); In re Opinion of the Justices, 251 Mass. 569, 147 N.E. 681 (1925).

Finally, it is noteworthy that prior to the enactment of ERISA in 1974, at least seven states, including Massachusetts, had already enacted mandated benefits statutes. See Ariz. Rev. Stat. Ann. §20-1402(4)(b) (West Supp. 1983-1984) (enacted in 1971); Conn. Gen. Stat. Ann. §38-174d (West Supp. 1984) (enacted 1971); Ill. Ann. Stat. ch. 73, §979(7) (Smith-Hurd Supp. 1983-1984) (enacted in 1972); Mass. Gen. Laws, ch. 175, §47B (enacted in 1973); Md. Ann. Code art. 48A, §477E (Michie Supp. 1983) (enacted in 1973); Minn. Stat. Ann. §62A.149 (West Supp. 1984) (enacted in 1972); 1971 Wis. Laws ch. 325 (enacted in 1971).

> be sensibly reconciled by confining the latter to the traditional areas of state insurance regulation, such as the specification of standards of conduct in sales and advertising, the prescription of criteria governing investment of funds, and the requirement that adequate reserves be maintained. (citation omitted). This approach, which focuses on the kinds of insurance regulation in which the states have traditionally engaged, permits state regulation in the areas that Congress almost certainly had in mind when it enacted the insurance savings clause. It does so without significantly affecting the operation of ERISA plans.

Jurisdictional Statement of Metropolitan at 24.

It is not surprising that the insurers cite not one statute, case or line of legislative history to support this odd reading of the statutory phrase "any law of any state which regulates insurance." Even the world's most original lexicographer could not concoct a theory

which makes "any" synonymous with "traditional". While Shaw and Alessi counsel resort to the plain language and legislative history of each exception to ERISA's preemption, the insurers offer only their own peculiar notions of public policy to support their tortured reading of the insurance exemption.

In addition to analyzing the language of ERISA's preemption and saving clause, this Court in both Shaw and Alessi carefully considered the effect of the state law in question on the operation and policies of ERISA. Thus in Alessi, the Court struck down a state law which prohibits "set off," a practice which ERISA explicitly permits. Alessi, 451 U.S. at 524-25. And in Shaw, the Court allowed the state

to mandate benefits, even where it might result in a lack of uniformity in ERISA plan administration. Shaw, 103 S. Ct. at 2905-06. The reason: there was no conflict with the purposes of ERISA, and the explicit exception to preemption for state disability laws specially sanctioned such a result. Id. at 2905.

In both cases, the Court carefully looked to legislative history for guidance where the language of the Act was unclear, but where the language was clear, the court adhered to the plain meaning of the language. For instance, in considering whether ERISA preempted the New York Disability Benefits Law,[9/]

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9/ In reaching this result the Court emphasized that there was "no reason to torture the plain language of §4(b)(3)[29 U.S.C. §1003(b)(3)]..." Shaw, 103 S. Ct. at 2905.

the plain meaning of the word "solely." coupled with a lack of contrary legislative history, led the Shaw Court to conclude that multi-benefit plans were not sheltered from ERISA preemption. Id. at 2905.10/

Significantly, in upholding the Disability Benefits Law, the Court noted that its ruling permitted a state to require compliance with a mandated benefits law. Id. at 2906. Thus, the Court noted its approval of a statutory scheme that would indirectly dictate the contents of an ERISA plan and thereby detract from uniformity of multi-state benefit plans. Id.

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10/ In so ruling, the Court considered an exception to ERISA preemption for "any employee benefit plans...maintained... solely for the purpose of complying with applicable...disability insurance laws." 29 U.S.C. §1003(b)(3) (emphasis added).

The tests of Alessi and Shaw, which are language, intent of Congress as revealed in legislative history, and the practical effect of the state law on the purpose and operation of ERISA, all require that Section 47B, a state insurance law, survive preemption.

## VI. CONCLUSION

For the foregoing reasons, the insurance companies' appeals should be dismissed and the decision below should be summarily affirmed.

Respectfully Submitted,

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